

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter of

WORLDCOM, INC., et al

Debtor.

Case No.
02-13533

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June 17, 2003

10:00 a.m.

United States Custom House
One Bowling Green
New York, New York

B E F O R E:

HON. ARTHUR J. GONZALEZ, U.S. BANKRUPTCY JUDGE

Hearing Re: Fee applications - Squire, Sanders & Dempsey, LLP, as co-counsel for the Debtors; Akin Gump Strauss Hauer & Feld, LLP, as counsel to the Official Committee of Unsecured Creditors; Pricewaterhouse-Coopers, LLP, as special advisors to the Debtors; Kelley Drye & Warren, LLP, as special counsel for the Official Committee of Unsecured Creditors; Wilmer Cutler & Pickering, Piper Rudnick, LLP, Lawler Metzger & Milkman, LLC, Smith Pachter McWhorter & Allen, PLC, Weil, Gotshal & Manges, LLP, Lazard Freres & Co., LLC, Scully Scott Murphy & Presser, PC, Jenner & Block, LLC, KPMG, LLP, Patton Boggs, LLP - adjourned to a date to be determined; (03-2366) MCI WorldCom Communications, Inc., Pacific Bell Telephone Company, Pre-Trial Conference - adjourned to 6/26; (03-2366) MCI WorldCom Communications, Inc., Pacific Bell Telephone Company, Motion by defendant to dismiss complaint - adjourned to 6/26; (02-2366) MCI WorldCom Communications, Inc., Pacific Bell Telephone Company, Motion filed by the plaintiff for summary judgment - adjourned to 6/26; Motion of Southwestern Bell

2 agreements, known as the managed value plans have
3 lapsed by their own terms or, in the alternative,
4 relief from the automatic stay to allow for
5 termination of the agreements or, in the alternative,
6 for an order compelling the Debtors to assume or
7 reject the agreements - adjourned to 7/01; Motion by
8 Verestar, Inc. for relief from stay and authorizing
9 setoffs, compelling payment of post-petition
10 obligations and requiring Debtor to assure or reject
11 executory contract. Objection filed by Debtor -
12 adjourned to 7/29; Motion filed by Staton Holding,
13 Inc. for relief from the automatic stay to pursue
14 administrative relief - adjourned to 7/01; Motion by
15 Spectrasite Communications, Inc. to compel Debtors to
16 assume or reject leases and for immediate payment of
17 post-petition amounts related thereto - adjourned to
18 7/01; Motion by Mississippi Power Company to compel
19 Debtor to assume or reject that certain agreement for
20 the provision of Fiber Optic Facilities and Services
21 dated August 12, 1991 and compel timely performance
22 obligations under unexpired lease of personal
23 property. Objections filed - adjourned to 7/15;
24 Motion by Howard Katz, Wanda Cheryl Katz, Richard B.
25 Schwartz, Charles Brewer and Harriet Brewer for relief
from the automatic stay. Objections filed - adjourned
to 7/15; (03-2032) WorldCom, Inc, Max V. Laughlin, et
al. Motion by defendants Adrian Warren, et al, for
findings of fact. Motion by defendants Adrian Warren,
et al, to quash service, vacate orders and dismiss
defendants. Motion by defendants Adrian Warren, et
al, to amend judgment. Omnibus reply filed by the
plaintiffs to all of the above motions - Adjourned to
7/01; (03-2175) Linear Electric Company, WorldCom,
Inc. and WorldCom Purchasing, LLC, Pre-Trial
Conference - adjourned to 7/15; Motion filed by
Caroline Covington for relief from the automatic stay
- adjourned to 7/15; Motion filed by Dr. Yanina
Shapiro for leave to file a proof of claim beyond
deadline - Motion to be decided on the submissions;
Motion filed by Mercantile Partners, LP, for allowance
of late-filed proof of claim - adjourned to 7/08;
Motion filed by the Debtors for authorization (i) to
transfer assets between the Debtors, and (ii) to
reject an executory contract. Objection of the City
of New York filed. Objection of AT&T Corp. filed -
adjourned to 7/08; Hearing re: Motion of the Debtors
to enforce the automatic stay against actions of

2 filed - adjourned to 7/01; Motion by plaintiff
3 Snavely, Zinmeister and NYLB, Inc. for relief from
4 stay. Objections by Debtors filed. Joinder to the
5 Debtor's objection filed by the Official Committee of
6 Unsecured Creditors - adjourned to 7/01; (02-3511)
7 Focal Communications Corporation, WorldCom, Inc., et
8 al - Pre-Trial Conference - adjourned to 7/01;
9 (03-2105) WorldCom, Inc., ABN Amro Bank, N.V., et al,
10 Motion filed by the plaintiff for extension of
11 temporary injunction. Defendants' opposition filed;
12 Motion by Debtors for approval of settlement with
13 Valor Telecommunications Enterprises, LLC, and
14 Longacre Master Fund, Ltd.; Motion filed by the
15 Debtors for an order authorizing the assumption of an
16 unexpired, amended lease of nonresidential real
17 property located in Jackson, Mississippi; OCS RE:
18 Motion filed by the Debtors for entry of an order (A)
19 establishing procedures for Debtors' proposed auction
20 of Pentagon City and related property, (B) approving
21 "break-up fee" arrangement with proposed purchase, (C)
22 establishing date and time for sale hearing, and (D)
23 approving form and manner of notices; Motion filed by
24 the Debtors for approval of rejection of 113
25 individual service orders; Motion filed by the Debtors
for approval of rejection of 86 individual service
orders; Motion by Wilmer, Cutler & Pickering to
authorize retention as special counsel to the special
investigative committee and motion for relief from
certain terms of such order; Objection filed by the
Debtors to proofs of claim of Teldar Communications
Network, Inc., Claim Nos. 24004 and 24005. Response
filed by Teldar Communications Network, Inc.;
Objections filed by the Debtor to proofs of claim
filed by Oracle Corporation relating to software
license dispute. Reply by Oracle Corporation filed;
Motion filed by National Message Center, Inc. for
relief from the automatic stay. Objection by Debtors
filed. Joinder of the Official Committee of Unsecured
Creditors to Debtors' objection; Motion filed by
HSG/ATN, Inc. for allowance and payment of
administrative expense. Objection by Debtors filed.
Joinder to the Debtors' objection filed by the
Official Committee of Unsecured Creditors.

Reported by: SABRINA SALAS, CSR

A P P E A R A N C E S:

WILMER, CUTLER & PICKERING

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BY: ADAM P. STROCHAK, ESQ.

- and -

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Attorneys for Official Committee

of Unsecured Creditors

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New York, New York 10022

BY: SHUBA SATYAPRASAD, ESQ.

-and-

IRA DIZENGOFF, ESQ.

A P P E A R A N C E S: (Continued)

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2 A P P E A R A N C E S (Continued):

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TELEPHONE APPEARANCES:

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MARC R. STANLEY, ESQ.,

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JEFFREY W. NEMORE, ESQ.,

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JAMES HEIDELBACH, ESQ.,

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Gerhardt & Smith, LLP

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DARRYL LADDIN, ESQ.,

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1 WORLDCOM, INC., ET AL
2 P R O C E E D I N G S

3 MR. PEREZ: Good morning, Your
4 Honor. Let me just flip directly to the resolved
5 matters.

6 The first two matters, Your Honor,
7 are stipulations to be entered, one in connection
8 with WorldCom versus ABN Amro, and the other one
9 in connection with Valor Communications. They're
10 on Page 14 of the docket. Mr. Storchak is going
11 to present those, but before I do that, Your
12 Honor, I wanted to introduce to the Court Paul
13 Eskildsen who is the new acting general counsel at
14 WorldCom.

15 THE COURT: How are you doing?

16 MR. ESKILDSEN: Good morning.

17 MR. PEREZ: He had never been here
18 before so he wanted to understand what we were
19 doing and be introduced to the Court, but I will
20 let Mr. Storchak take these first two.

21 THE COURT: All right. Thank you.

22 MR. STROCHAK: Good morning. Adam
23 Storchak, Weil, Gotshal & Manges, for the Debtor.

24 The first matter is the Debtor's
25 motion for extension of the temporary injunction

1 WORLDCOM, INC., ET AL
2 issued in the adversary proceeding, WorldCom, Inc.
3 versus ABN Amro Bank, Adversary 03-2015. You will
4 recall, Your Honor, this matter initially came
5 before the Court on our motion for preliminary
6 injunction.

7 The Court granted that motion in
8 March and entered a preliminary injunction
9 enjoining prosecution of claims against Ms. Mayer,
10 Susan Mayer, the Debtor's former senior
11 vice-president and treasurer through June 15th,
12 and the preliminary injunction order left open an
13 opportunity for the Debtor to move to extend that
14 injunction beyond June 15th on ten day's notice.

15 We did file a motion to extend the
16 injunction, I believe it was filed on June 7th.
17 And I am pleased to report that after extensive
18 discussions with counsel for the bank defendants
19 in that case, that we have reached agreement for a
20 short continuation of the injunction for an
21 additional 30 days.

22 The reason for the continuation --
23 I know that the Court is probably aware that
24 Ms. Mayer's employment status with the Debtors has
25 changed since last week, but the reason for the

1 WORLDCOM, INC., ET AL

2 extension is that the Debtors had been in
3 settlement negotiations with the banks to resolve
4 the banks' claims against both the Debtors and
5 Ms. Mayer, and those -- those negotiations have
6 proceeded satisfactorily to the point that we have
7 a tentative agreement that is still subject to
8 committee approval and, of course the Court's
9 approval by this Court. We felt it was
10 appropriate to extend the injunction with respect
11 to the claims against Ms. Mayer for an additional
12 30 days to let that process take its full course.

13 I believe Mr. Heidelberg, counsel
14 for the banks, was going to participate by
15 telephone today. I do have a stipulation to
16 present. Mr. Heidelberg has agreed to the form of
17 stipulation. And if there are no questions, I can
18 present a copy for the Court.

19 THE COURT: Anyone else wish to be
20 heard?

21 MR. DIZENGOFF: Thank you, Your
22 Honor. Ira Dizengoff, Akin, Gump, for the
23 Committee.

24 The Committee is examining the
25 proposed terms of the settlement with the banks.

1 WORLDCOM, INC., ET AL

2 I think that 30-day window for this injunction
3 will give us sufficient time to finish our
4 diligence. These are very complicated issues.
5 It's a very complicated lawsuit. The banks
6 brought -- excuse me -- in connection with
7 constructive trust and most intermediate balance.
8 We are doing that. We think in due course we will
9 come to a recommendation for the Committee and it
10 will be before the Court, but the injunction makes
11 sense, Your Honor.

12 THE COURT: All right. Anyone
13 else?

14 MR. HEIDELBACH: This is James
15 Heidelberg. I am participating by phone and I
16 represent the 20 banks that are the defendants in
17 the adversary proceeding. And I think
18 Mr. Strochak has -- has represented the banks'
19 position correctly.

20 Our sole impetus for entering into
21 this extension is the ongoing settlement
22 discussion. Other than that, we don't think there
23 would be any reason for the injunction to
24 continue.

25 THE COURT: All right. Thank you.

1 WORLDCOM, INC., ET AL

2 Anyone else?

3 (No response.)

4 THE COURT: No further comment
5 being heard, based on the pleadings as filed and
6 representations made on the record and no
7 opposition having been interposed, I will grant
8 the request as modified. You may hand up the
9 order.

10 Go ahead.

11 MR. STROCHAK: The next matter,
12 Your Honor, is the Debtor's motion pursuant to
13 Bankruptcy Rule 9019 for approval of a settlement
14 with Valor Telecommunications Enterprises, LLC and
15 Longacre Master Fund, Ltd., Docket No. 5644.

16 We provided notice of this motion
17 in accordance with the Court's case management
18 order. We have not received any objections to it.

19 The Committee did raise some
20 informal questions and potential objections to the
21 motion and we spent a lot of time working with the
22 Committee and its counsel to address their
23 concerns about it. I believe all those concerns
24 have been addressed and the agreement we have
25 reached is that based on a representation on the

1 WORLDCOM, INC., ET AL
2 record by counsel for Valor regarding the nature
3 of the relationship between Valor and Longacre,
4 that the Committee is satisfied and has no
5 objection to this motion.

6 In short, I will turn the podium
7 over to counsel in a second, but in terms of a
8 short summary, the agreement provides for the
9 fixing of Valor's claim in this matter. Valor had
10 to assert a claim in the amount of approximately
11 \$4.8 million and it had a claim to a right of
12 setoff with respect to approximately \$1.7 million
13 or so. All of this is recounted in the motion
14 itself in terms of the specific numbers involved.

15 We have agreed to fix the amount of
16 the setoff and allow the setoff, and the result of
17 that is it will fix the amount of Valor's claim
18 which has subsequently been sold to Longacre, at
19 my recollection, was approximately \$3.6 million --
20 excuse me -- 3.1 -- \$3.128 million will be the net
21 amount of the claim.

22 In addition, the agreement is a
23 compromise of other issues related to rejection of
24 certain circuits. Valor took certain positions
25 with respect to the priority that any termination

1 WORLDCOM, INC., ET AL
2 fees would get with respect to circuits that were
3 rejected. And we have been able to resolve that
4 dispute with an agreement that provides that any
5 termination fees due under FCC fall under tariffs
6 with respect to termination of services under
7 these circuits will be paid as a prepetition
8 unsecured claim.

9 So we believe that's a favorable
10 resolution for the Debtors and represents a fair
11 compromise under the standards of Bankruptcy Rule
12 9019.

13 So with that, I ask Mr. Taylor,
14 counsel for Valor, to make the representation that
15 we previously discussed. And then I do have an
16 order to hand up if the Court has no further
17 questions.

18 THE COURT: All right. Anyone else
19 wish to be heard?

20 MR. TAYLOR: I'm already here. I
21 will use this one.

22 All right. Bill Taylor with
23 McCarter & English in Wilmington, Delaware. I
24 have been asked by the Debtors to address a
25 concern the Committee had that Valor might have an

1 WORLDCOM, INC., ET AL
2 ongoing financial interest with Longacre.

3 Basically the way this worked was
4 in February, Valor sold Longacre its gross claim
5 and then Valor essentially repurchased or paid
6 back a portion of the claim that was the setoff.
7 So the parties have evened up their financial
8 dealings. There are no further financial dealings
9 and I don't know what else to say.

10 I believe they should address what
11 the Committee was concerned about.

12 THE COURT: The Committee?

13 MR. DIZENGOFF: Thank you, Your
14 Honor.

15 The only concern we have is where
16 the money was actually going via the setoff back
17 into Longacre's hands, but I think you represented
18 that's not the case. Their economics are done
19 between Valor and Longacre. With that
20 representation, we have no objection to the
21 settlement.

22 MR. TAYLOR: Yes, that is correct.

23 THE COURT: All right. Anyone else
24 wish to be heard?

25 (No response.)

1 WORLDCOM, INC., ET AL

2 THE COURT: No further comment
3 being heard, based on the representations made on
4 the record and no opposition having been
5 interposed, I will grant the motion. You may hand
6 up the order.

7 All right. Go ahead.

8 MR. STROCHAK: I believe Mr. Perez
9 has the next matter, Your Honor.

10 MR. PEREZ: Your Honor, the next
11 matter is the Debtor's motion pursuant to 365 of
12 the Bankruptcy Code to assume a lease of unexpired
13 real property in Jackson, Mississippi, Docket No.
14 6062.

15 I don't believe there have been any
16 objections to this. This is a relatively routine
17 assumption of a real property lease.

18 THE COURT: All right. Does anyone
19 else wish to be heard?

20 (No response.)

21 THE COURT: No further comment
22 being heard, based on the pleadings as filed and
23 no opposition having been interposed, I will grant
24 the motion. You may hand up the order.

25 MR. PEREZ: Your Honor, the next

1 WORLDCOM, INC., ET AL
2 motion is the motion for authority to sell,
3 auction, the Pentagon City real estate property.

4 As the Court is aware, this has
5 been a subject of motions in the past. It's a
6 two-story building, Pentagon City. There is
7 subject to a pending lease with the TSA, the new
8 Division of Homeland Security that does the
9 security at the airports. The proposed purchase
10 price is a little in excess of \$133 million. And
11 there's some additional consideration.

12 The break-up fee is 1.95 percent of
13 the purchase price. We're proposing to have an
14 auction on July 23rd, Your Honor, and the sale
15 hearing would be July 29th.

16 We did receive comments from both
17 the United States Attorney's Office in their
18 capacity as counsel for the lessee, the TSA, as
19 well as comments from the Committee. I believe
20 that we've addressed all of the comments that have
21 been raised. And I don't believe that there's any
22 continuing either objection or concern with the
23 proposed form of order authorizing the bid
24 procedures and the payment of the break-up fee.

25 THE COURT: All right. Anyone else

1 WORLDCOM, INC., ET AL
2 wish to be heard?

3 MR. SOMERSTEIN: Just -- Mark
4 Somerstein, Kelley, Drye & Warren, for the
5 Creditors' Committee. We note for the record our
6 concerns were addressed in the notice and in the
7 sale -- the proposed form of bidding procedures
8 order.

9 Thank you.

10 THE COURT: All right. Anyone
11 else?

12 (No response.)

13 THE COURT: Based on the pleadings
14 as filed and the representations made on the
15 record, I will grant the request.

16 You may hand up the order.

17 MR. PEREZ: Your Honor, Mr. Marcus
18 is going to handle the circuit rejections.

19 MR. MARCUS: Your Honor,
20 Christopher Marcus, Weil, Gotshal & Manges, on
21 behalf of the Debtors.

22 The next two motions on the docket,
23 motions to reject circuits, are on the agenda
24 because we had planned to go forward with them.
25 Last evening we received a call from -- we

1 WORLDCOM, INC., ET AL
2 received a call from counsel for Verizon. Verizon
3 had several concerns about some of the specific
4 circuits on the motion to reject 113 service
5 orders and so we've agreed to adjourn that motion
6 until next week's hearing.

7 With respect to the motion seeking
8 rejection of 86 individual service orders, there
9 was another concern raised by Verizon regarding
10 the provision surrounding filing of proofs of
11 claim. We've agreed with Verizon that we will
12 work together to just tweak the language, and then
13 if it's okay with Your Honor, we will submit an
14 order to the Court, an agreed upon order to the
15 Court as soon as we've completed that language.

16 THE COURT: All right. What
17 adjourn date -- what other date does Verizon have
18 matters on that it was seeking these to be
19 adjourned to or --

20 MR. MARCUS: Just until next
21 Tuesday, Your Honor.

22 THE COURT: All right. Because
23 there was an issue -- there's an issue that will
24 become clearer later today about matters that are
25 going to need to be adjourned, but originally

1 WORLDCOM, INC., ET AL

2 there shouldn't have been anything on the 22nd.

3 There are a number of matters that are on the 22nd
4 and there's going to have to be -- no, the 24th,
5 the 24th is going to have to be utilized, but it's
6 probably not going to be able to be utilized for
7 WorldCom unless it's an emergency.

8 MR. MARCUS: That's not a problem.
9 We can push it.

10 THE COURT: To July 1st?

11 MR. MARCUS: That would be fine.

12 THE COURT: So 7/1 at 10:00 o'clock
13 for both the 113 individual service orders and the
14 86 individual service orders.

15 MR. MARCUS: That would be fine,
16 Your Honor. Thank you.

17 THE COURT: All right. Thank you.

18 MR. PEREZ: Your Honor, we have
19 been aware that the 24th was not available and I
20 believe that in the last couple of months we made
21 sure that nothing got set there. I think some of
22 the things may have gotten set there originally
23 without people realizing it.

24 THE COURT: I think that and -- I
25 think that's right. I don't know if I made a

1 WORLDCOM, INC., ET AL
2 mistake and we adjourned something to that date as
3 well, but --

4 MR. PEREZ: No, we -- the Court did
5 grant us one setting on the 26th on something, but
6 other than that -- Your Honor, the next matter is
7 the motion of Wilmer, Cutler, Docket No. 6441. I
8 believe Mr. Perlstein is here, counsel for the US
9 Trustee.

10 MR. PERLSTEIN: Good morning, Your
11 Honor. William Perlstein, Wilmer, Cutler,
12 Pickering.

13 This is a request for a limited
14 modification to the existing retention order to
15 allow Wilmer, Cutler to represent additional
16 RBOCs. The reason the operating company is
17 adverse to the Debtors in FCC and other regulatory
18 proceedings, the existing orders allows such
19 representations of Verizon, Qwest and one small
20 matter for SBC. The new order would expand the
21 authority to allow the general representation of
22 SBC and BellSouth in such regulatory proceedings.

23 We believe that the US Trustee and
24 the Debtors are agreeable to this.

25 THE COURT: The US Trustee's

1 WORLDCOM, INC., ET AL
2 Office?

3 MR. ZIPES: Good morning, Your
4 Honor. Greg Zipes from the US Trustee's Office.

5 The US Trustee does consent to the
6 limited relief requested today. This would not be
7 a granting of the motion in full. There needs to
8 be further discussion between Wilmer, Cutler and
9 the US Trustee's Office on that.

10 But what's being approved today,
11 subject to the Court's approval, of course, is
12 that Wilmer, Cutler would be permitted to
13 retain -- to represent the other RBOCs, as they're
14 called here, on matters that aren't before this
15 Court, and that appropriate loan off procedures
16 will continue to be in place on the part of
17 Wilmer, Cutler, such that the attorneys involved
18 with the investigation by the Special Committee,
19 those that have reviewed the numerous E-mails of
20 WorldCom and the documents of WorldCom, would not
21 be involved with any of these matters relating to
22 the other RBOCs. And the order would make clear
23 that that's the relief being granted today.

24 And there is a proposed order. I
25 don't know this Court has actually seen the final

1 WORLDCOM, INC., ET AL
2 draft of the order, but there has been language
3 worked out between the US Trustee's Office and
4 Wilmer, Cutler that provides for that limited
5 relief.

6 THE COURT: All right. The
7 Committee?

8 MR. DIZENGOFF: Your Honor, we've
9 had lots of discussions with the Wilmer, Cutler
10 firm about their application. We have not seen
11 the revised form of order. As a conceptual matter
12 we agreed previously they could represent Verizon
13 in regulatory matters and Qwest in regulatory
14 matters. And I understand this Court continues
15 that sort of status quo with respect to certain
16 other RBOCs.

17 There were other aspects of the
18 order we did have concern about and that would be
19 subject to further discussion between the
20 Committee and the Wilmer, Cutler firm, but my
21 understanding from the representations of
22 Mr. Perez who I spoke to yesterday, those are not
23 going further today and we'll have further
24 discourse about that.

25 MR. PERLSTEIN: That is correct,

1 WORLDCOM, INC., ET AL
2 but I have a form of order that I can hand up. It
3 is limited solely to the other RBOCs, which is SBC
4 and BellSouth, and solely to regulatory
5 proceedings, principally, the FCC and State
6 proceedings, not inside this Court, and limited to
7 the same sort of proceedings that we have
8 continued to represent Verizon, Qwest on
9 throughout this case, but that they would not be
10 representing any further clients in the bankruptcy
11 case.

12 THE COURT: All right. Anyone
13 else?

14 (No response.)

15 THE COURT: No further comment
16 being heard, based upon the pleadings filed and
17 the statements made on the record, I'll grant the
18 request as modified and after -- has the Committee
19 now had an opportunity to review it?

20 MR. DIZENGOFF: This is fine. This
21 form of order is fine.

22 THE COURT: You may hand up the
23 order.

24 MR. PERLSTEIN: Thank you, Your
25 Honor.

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WORLD COM, INC., ET AL

MR. PEREZ: The next matter is a matter that's going to be submitted on submission so it's just noted in there but -- and that concludes the uncontested matters. So now we --

THE COURT: Before we go, let's just for the record, the matter you are referring to is the motion filed by Dr. Yanina Shapiro for leave to file proof of claim beyond the deadline.

MR. PEREZ: Correct.

THE COURT: She has consented to or requested this resolution on the submissions and the Debtor has requested to -- has consented to that?

MR. PEREZ: Yes, we have filed a response with a proposed form of order that should have to get to ECF to this party.

THE COURT: All right. Thank you.

MR. PEREZ: Your Honor, I believe that is all of the uncontested matters. The one thing that we did not mention was the continuation of the fee applications to July 15th.

THE COURT: All right. They will be adjourned to 7/15 at 10:00 o'clock, and there will be at some point a further notification as to

1 WORLDCOM, INC., ET AL
2 whether all these fee applications will be ready
3 to go forward at that time.

4 MR. SOMERSTEIN: Mark Somerstein.
5 I certainly have no objection to the adjournment
6 of Kelley Drye's fee application, but I think
7 there is one matter I should put on the record and
8 perhaps even by putting on the record, the issue
9 may get resolved.

10 For whatever reason,
11 notwithstanding the good efforts of Mr. Perez and
12 Ms. Goldstein, Kelley, Drye has not been paid in
13 the case at all. There is an administrative order
14 requiring the Debtors to pay 80 percent of fees
15 and expenses; however, the Debtors appear with
16 respect to Kelley, Drye not to have complied with
17 that order.

18 We haven't raised it with the Court
19 thus far. We certainly would anticipate we won't
20 need to raise it with the Court, but I think
21 simply by putting it on the record today, we may
22 be able to resolve the issue now that it's known
23 to the Court.

24 Thank you.

25 THE COURT: Mr. Perez?

1 WORLDCOM, INC., ET AL

2 MR. PEREZ: Your Honor, I was aware
3 that this was an issue. I, frankly, thought the
4 issue had been resolved weeks or months ago. I
5 was surprised when Mr. Somerstein told me right
6 before the hearing that he was going to put this
7 on the record without, you know, trying to contact
8 me again to make sure -- to see what I could do
9 about it.

10 Obviously, the Debtor has paid tens
11 of millions of dollars in fees. This is an
12 oversight, not anything intentional. I just wish
13 it had been handled in a different fashion. I
14 have made probably three or four inquiries,
15 requests, et cetera, not only on behalf of Kelley,
16 Drye, but other law firms to ensure payment, and
17 it's unfortunate it had to be brought up in this
18 respect and we'll try to take care of it.

19 THE COURT: All right. The next
20 matter?

21 MR. PEREZ: Teldar. I believe
22 Mr. Strochak is going to be handling the rest of
23 the contested matters.

24 MR. STROCHAK: The next two matters
25 are claims objections that are listed as contested

1 WORLDCOM, INC., ET AL
2 because they are still active objections, but
3 they're on the calendar solely for scheduling
4 purposes.

5 The first is the Debtors' objection
6 to the proofs of claim of Teldar Communications
7 Network, Claim Nos. 24004 and 24005, and the
8 objection is docketed at Docket No. 5097.

9 We have been able to work out an
10 appropriate scheduling order with counsel for
11 Teldar. I don't know if they're participating by
12 telephone or in the courtroom today.

13 This is a matter that's handled
14 primarily by Jenner & Block, but since it was just
15 presentment of an agreed order in order to save
16 the costs, I just offered to present the order.

17 I have a scheduling order to
18 present, Your Honor, that will essentially get the
19 claims through the discovery process by about
20 April of next year. I believe Teldar has filed a
21 motion for relief from the automatic stay seeking
22 leave to liquidate this claim in the original
23 court that has a separate schedule as set forth in
24 accordance with the case management order; so,
25 obviously, the agreed scheduling order is subject

1 WORLDCOM, INC., ET AL
2 to revision, depending on the outcome of the
3 motion to lift the automatic stay.

4 But if the Court has no questions,
5 I can present an agreed scheduling order in this
6 claim.

7 THE COURT: You may have said this
8 in your presentation, but what is the adjourned
9 date, then, for a hearing for this or what date
10 were you looking for if you haven't put that in
11 the schedule?

12 MR. STROCHAK: We have -- the next
13 date is a pretrial conference scheduled for
14 April 5, 2004. I am hoping that that's a Tuesday.

15 THE COURT: Well, we have plenty of
16 time to adjust it.

17 Is that for both matters?

18 MR. STROCHAK: That's for the
19 Teldar matter. The next matter is separate.

20 THE COURT: All right. Go ahead.

21 MR. STROCHAK: I can present the
22 order, unless Your Honor has further questions.

23 THE COURT: You may hand up the
24 order.

25 Go ahead.

1 WORLDCOM, INC., ET AL

2 MR. STROCHAK: The next matter is
3 the Debtors' objection to proofs of claim filed by
4 Oracle Corporation related to a software license
5 dispute. That's Docket No. 5101.

6 Just as with the previous matter,
7 this is one that's been handled primarily by
8 Jenner & Block. They do have an agreed scheduling
9 order again to present.

10 The scheduling order really
11 addresses scheduling on a potential motion to lift
12 the automatic stay and establishes a schedule for
13 that. I believe the control date for this one
14 would be August 19th, 2003 and, again, if I can
15 just ask the Court's indulgence, I hope that's a
16 Tuesday. I just don't have my calendar
17 immediately before me.

18 THE COURT: All right.

19 MR. STROCHAK: So that would be the
20 hearing date for the motion.

21 THE COURT: You didn't say 8/19?

22 MR. STROCHAK: I did, yes.

23 THE COURT: That will not be
24 available, I am sure. So it's going to have to
25 be -- the following week begins the scheduling

1 WORLDCOM, INC., ET AL
2 confirmation hearing.

3 MR. STROCHAK: That's right. Yes.

4 THE COURT: Why don't you consult
5 with Oracle and see if we can work out a date
6 either before or after -- after the 19th, but not
7 that week?

8 MR. STROCHAK: We'll do that. The
9 way the order is set up now, it's an on or before
10 date. Why don't we go back and --

11 THE COURT: We'll have to go back
12 to the 5th.

13 MR. STROCHAK: I was going to
14 suggest why don't I do this? Rather than end up
15 with dates that can't work, why don't I take this
16 one back and work out a schedule that will fit the
17 Court's August schedule in light of whatever
18 vacation plans the Court has and the confirmation
19 hearing, and then we will submit a scheduling
20 order for entry by the Court.

21 THE COURT: All right.

22 All right. The next matter, then,
23 is a motion filed by National Center, Inc.

24 MR. STROCHAK: That is correct,
25 Your Honor.

1 WORLDCOM, INC., ET AL

2 MR. SMITH: This is Harlan Smith
3 representing National Message Center.

4 THE COURT: All right. Go ahead.

5 MR. SMITH: I am here with Mr. Lee
6 Parks who is the litigation attorney in the case
7 in the United States District Court in the
8 Northern District of Georgia and also Mr. Morgan
9 Cooper as principal of National Center, Inc.

10 We are requesting the Court to
11 allow us to proceed to liquidate to trying the
12 trial in the United States District Court. We
13 want to point out to the Court that there's a
14 breach of contract.

15 THE COURT: I am going to have to
16 take a five-minute break. I will return in a
17 couple of minutes and continue.

18 (Short recess taken.)

19 THE COURT: All right. Counsel for
20 National Message Center, you may continue and
21 speak a little louder.

22 MR. SMITH: As I say, I represent
23 National Message Center, Inc. I am here with the
24 litigation attorney in the case pending in the
25 United States District Court in the Northern

1 WORLDCOM, INC., ET AL
2 District of Georgia. And also with Mr. Cooper who
3 is the principal -- one of the principals of
4 National Center, Inc.

5 Now the case in the US District
6 Court was filed in September of 2001 sometime
7 before the filing of WorldCom Chapter 11, and the
8 case involved is a rather complex breach of
9 contract failure to provide services resulting in
10 National Message Service, Inc. incurring
11 substantial lawsuits and went out of business.

12 We didn't expect it would probably
13 be 10 to 15 witnesses required. All we're really
14 asking the Court to do is allow us to proceed to
15 make a determination or liquidate that particular
16 claim. And they're in the process of -- discovery
17 documents have been furnished to WorldCom's
18 counsel and I think WorldCom is short on
19 furnishing information back to my client, but I
20 can let Mr. Parks speak to that issue.

21 Basically, and we waited this --
22 this point of filing the motion because obviously
23 we recognize the Court would not entertain a
24 motion in the early stages of WorldCom's
25 Chapter 11; however, almost 12 months have gone

1 WORLDCOM, INC., ET AL
2 by, disclosure statement and plan has been
3 presented, and ultimately a resolution process
4 will be evolving.

5 And we believe it would be in the
6 best interest of the creditors, as well as Debtor,
7 and would represent judicial economy to let us
8 proceed in the District Court and let us proceed
9 with the matter in the liquidated amount of the
10 plan.

11 And that's my preliminary remarks
12 in the case.

13 THE COURT: All right. Thank you.
14 All right. Mr. Strochak?

15 MR. STROCHAK: Thank you, Your
16 Honor.

17 The fundamental problem we have
18 here is really a question of numbers, Your Honor.
19 As the Court knows, as we represented in the past,
20 the Debtors had somewhere in the neighborhood of
21 2500 prepetition lawsuits pending at the time they
22 went into Chapter 11 last July. While it may be
23 that with respect to any individual claim or any
24 one of these individual lawsuits that the effect
25 of lifting the stay to allow liquidation of that

1 WORLDCOM, INC., ET AL

2 one lawsuit in another forum might not have an
3 adverse effect standing alone on the conduct of
4 these Chapter 11 cases and the Debtors' ability to
5 manage them effectively and emerge effectively
6 from Chapter 11, it is a problem of aggregate
7 numbers. If we do this for every lawsuit, we are
8 going to -- going to end up spending an enormous
9 amount of time, money and energy in fighting off
10 these claims in District Courts, in State Courts
11 around the country in all the various
12 jurisdictions where the Debtors do business and
13 have lawsuits pending.

14 So, fundamentally, the problem for
15 us is that if you do it for this case, there's no
16 real reason why you wouldn't do it for any other
17 case and we end up with a waterfall effect where
18 every claim will end up being liquidated in the
19 home court at great prejudice to the Debtors and
20 their creditors.

21 This case, in particular, does not
22 present any compelling circumstances whatsoever to
23 lift the automatic stay. It's a lawsuit that's
24 pending in Georgia. I believe the lawsuit has not
25 progressed substantially. It is nowhere near

1 WORLDWIDE, INC., ET AL
2 ready for trial. Discovery has really just
3 commenced in the action. It is a relatively
4 ordinary commercial dispute between the Debtors
5 and one of their former customers. There are just
6 simply no circumstances that suggest under Sonnex
7 or any practical analysis of the matter that
8 litigating this one to liquidation in the home
9 court, so to speak, is of substantial benefit such
10 that it would not compromise the efficiencies
11 gained through centralized claims resolution in
12 the Bankruptcy Court.

13 I don't have much to add other than
14 that, other than what's already in our papers. I
15 think for the reasons -- the same reasons that the
16 Court has denied numerous motions to lift the stay
17 throughout the course of these proceedings, that
18 there is nothing about this particular action that
19 warrants relief from the stay. The appropriate
20 thing is to maintain the stay in place, to
21 adjudicate the claim in this Court without
22 prejudice to renewal of the motion at a later time
23 should it become clear for some reason that's not
24 clear at this juncture, that efficiency compels
25 litigating this claim in the home court.

1 WORLDCOM, INC., ET AL

2 So it would be our desire, Your
3 Honor, that the motion be denied without prejudice
4 to renewal at some later date, should some change
5 in circumstances become clear.

6 THE COURT: The Committee?

7 MS. SATYAPRASAD: Shuba Satyaprasad
8 from Akin, Gump on behalf of the Official
9 Committee of Unsecured Creditors.

10 Your Honor, it is the Committee's
11 position that the Movant has failed to demonstrate
12 that cause for relief from the stay exists and
13 that the Movant's claim can be expeditiously
14 handled in the claims resolution process.

15 Further, the Committee believes
16 that for the benefit of creditors, the Debtors'
17 focus at this stage of their cases should be on
18 the reorganization efforts. And for these reasons
19 and those stated by the Debtors, the Committee
20 joins the Debtors' objection.

21 THE COURT: All right. Counsel for
22 National Message Center, do you have anything to
23 add?

24 MR. SMITH: Yes, Your Honor.
25 Again, the point that's made by counsel concerning

1 WORLDCOM, INC., ET AL
2 the 2500 prepetition lawsuits, they have got to be
3 resolved in some state, form or fashion and,
4 obviously, your court, if it's going to hear 2500
5 claims of that nature, it would seem to me that
6 that would create an impossible task.

7 And all we're asking for is to let
8 this Court and the District Court in Georgia ensue
9 pending resolving that issue which is somewhat of
10 a liquidated claim actually, is it seems to me to
11 be a service of the Court in the interest of
12 judicial economy so the other courts can solve the
13 issue rather than have a log jam.

14 I don't know how you can handle
15 2500 lawsuits by one court. And I don't see it.
16 The arguments of the motion should be denied, they
17 seem to me without merit.

18 THE COURT: All right. I will take
19 it under advisement and issue an order as soon as
20 I can.

21 MR. SMITH: Thank you, Your Honor.

22 THE COURT: Thank you.

23 All right. The next matter is the
24 motion by HSG/ATN, Inc.

25 MR. STROCHAK: That is correct. My

1 WORLDCOM, INC., ET AL
2 colleagues, Mr. Marcus and Ms. King, are going to
3 handle this matter. And I believe counsel for HSG
4 is here. I think it's his motion.

5 THE COURT: What I think we should
6 do first is -- I'm going to take a five-minute
7 break to make sure that counsel for everyone
8 that's going to be here or sought to be heard on
9 this matter has given their appearances to the
10 court reporter.

11 To the extent that there are
12 documents to be submitted that there are no
13 evidentiary issues to be raised, they can be all
14 handed up and exchanged.

15 To the extent there are evidentiary
16 issues, just to focus on what they may be and I
17 will address them probably before I hear argument
18 and just take these few minutes to try to organize
19 ourselves so we can efficiently do this hearing.

20 I know I was advised there are
21 witnesses to be called. I need to end this
22 hearing by 1:00 o'clock, so we're going to have to
23 do everything we can to get it done by
24 1:00 o'clock and enable you to have all your
25 rights and the record as full as both sides really

1 WORLDCOM, INC., ET AL

2 want it. So I will return.

3 (Short recess taken.)

4 THE COURT: I will hear from the
5 Movant.

6 MR. KORAL: Richard Koral. I am
7 local counsel. I would move for the admission of
8 David Engelman, attorney admitted to practice in
9 the State of Arizona and the Federal District
10 Court in Arizona. He is counsel for HSG and would
11 be conducting the substantive matter of this
12 hearing.

13 THE COURT: All right. I will
14 grant the motion.

15 MR. KORAL: Thank you, Judge.

16 MR. ENGELMAN: Thank you, Your
17 Honor.

18 THE COURT: Pull it forward.

19 MR. ENGELMAN: David Engelman of
20 Engelman, Berger, Phoenix, Arizona, on behalf of
21 HSG/ATN, Inc.

22 This is our motion for payment of
23 an administrative expense claim. It's a contested
24 matter and I don't know how the Court would
25 prefer, if you would like oral argument first

1 WORLDCOM, INC., ET AL

2 before moving into evidence, but we are ready to
3 call my first witness, if you prefer to do that.

4 THE COURT: I think we should start
5 with the witnesses because in the event I do run
6 out of time, and I apologize that I haven't
7 started on time to give you a lot of time, I think
8 I would like to, at least, get the witnesses'
9 testimony in the record and then we can address
10 the issue of argument.

11 MR. ENGELMAN: Very good. Thank
12 you.

13 Before we do that, can we just -- a
14 housekeeping matter, move for the admission of the
15 exhibits that we have agreed to? I think
16 everything has been agreed to. We have marked as
17 Movant's Exhibit A, Your Honor, an agreed
18 statement of facts and a separate set of exhibits
19 attached to it. I believe it's in.

20 And what we have done is marked
21 this as Movant's Exhibit A, and you will see they
22 are tabbed numbers 1 through 19, so we have marked
23 those exhibits Movants Exhibit A1, A2, et cetera,
24 all the way through 19. We would move to offer
25 this into evidence.

1 WORLDCOM, INC., ET AL

2 THE COURT: Any objection?

3 MR. STROCHAK: No, objection, Your
4 Honor.

5 THE COURT: All right. It's
6 admitted as Movant's Exhibit A.

7 (Movant's Exhibit A1-19 received.)

8 MR. ENGELMAN: Finally, the other
9 exhibit from the Movant has been marked as
10 Movant's Exhibit B that I have in my hand. And I
11 would like to offer into evidence. I don't
12 believe there's any objection and I will approach
13 the bench with it.

14 THE COURT: Any objection?

15 MR. STROCHAK: No objection. Is
16 this the call log?

17 MR. ENGELMAN: Yes.

18 MR. MARCUS: No objection.

19 (Movant's Exhibit B received.)

20 MR. ENGELMAN: I would like to call
21 Mr. George Bein to --

22 THE COURT: Take that microphone
23 around and you may have to get close to it to pick
24 up what you are saying.

25 MR. ENGELMAN: May I use the

1 WORLDCOM, INC., ET AL

2 podium?

3 THE COURT: Yes. Watch your step
4 going through there.

5 G E O R G E B E I N, having
6 been duly sworn by a Notary Public of the
7 State of New York, (Sabrina Salas),
8 according to law, was examined and
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. ENGELMAN:

12 Q. Mr. Bein, good morning. State your
13 name for the Court.

14 A. My name is George Bein.

15 Q. Where do you currently reside?

16 A. I reside in Puerto Rico.

17 Q. And what's your relationship to the
18 Movant, HSG/ATN, Inc.?

19 A. I am the president of the company.

20 Q. Is that a corporation?

21 A. Yes, it is a regular corporation.

22 Q. And under what laws of what state?

23 A. HSG/ATN was incorporated and is
24 incorporated under the laws of Puerto Rico.

25 Q. Will you please tell the Court your

1 WORLDCOM, INC., ET AL

2 title?

3 A. Yes. I am the president of HSG.

4 Q. And when was HSG formed?

5 A. HSG was incorporated in Puerto Rico
6 approximately five years ago.

7 Q. And have your duties been as the
8 president of HSG since it was formed five years
9 ago?

10 A. My overall duties have really been
11 overall general management of the company on a
12 daily basis.

13 Q. Will you please describe for the
14 Court what HSG does for business purposes?

15 A. HSG is in the business of doing
16 marketing for telecommunications services.

17 Q. And it's done that exclusively
18 since its formation five years ago?

19 A. Yes, it has.

20 Q. Does it conduct any other type of
21 business?

22 A. No, not at all.

23 Q. So when you say that you market for
24 a telecom -- in the telecom business, can you
25 describe a little bit of how that's processed?

1 WORLDCOM, INC., ET AL

2 A. How we do our marketing?

3 Q. Yeah, how you do your marketing,
4 just generally.

5 A. Generally speaking, we have
6 advertisements in national publications. We
7 market through affinity groups like the Good Sam's
8 Club and Coast to Coast Resorts and we also have a
9 dealer network.

10 Q. Now, have -- has HSG conducted any
11 business with WorldCom in the past?

12 A. Very definitely. We have been
13 associated with WorldCom for the last ten years,
14 the last six of which have been on an exclusive
15 basis.

16 Q. And were there written contracts
17 entered into between HSG and WorldCom?

18 A. Yes.

19 Q. And when I say "WorldCom," I also
20 may mean its predecessor, is that correct?

21 A. Correct.

22 MR. ENGELMAN: Your Honor, may I
23 show the witness our exhibit book?

24 THE COURT: Go ahead.

25 BY MR. ENGELMAN:

1 WORLDCOM, INC., ET AL

2 Q. Mr. Bein, would you please take a
3 look at what's been marked as Movant's Exhibit A
4 and, in particular, Exhibits A1 through 7?

5 A. Okay.

6 Q. Can you -- are those the agreements
7 that HSG and WorldCom or its predecessor have
8 entered into over the course of the years?

9 A. Yes, it is.

10 Q. And, generally speaking, I don't
11 want to get into the detail, but generally, what
12 services are HSG providing to WorldCom by nature
13 of these agreements?

14 A. We provide marketing. Our
15 intention is to enroll customers for long distance
16 services, toll free numbers, calling cards and
17 Internet service.

18 Q. And what benefit does, in your
19 belief, does WorldCom receive from your services
20 by these contracts?

21 A. WorldCom benefits by billing the
22 customers for the services and receiving the
23 monthly revenue from the customers.

24 Q. And what type of services was
25 WorldCom providing pursuant to these agreements to

1 WORLDCOM, INC., ET AL
2 the customers?

3 A. WorldCom was providing the network
4 services for the -- carrying the actual long
5 distance traffic.

6 Q. What were the payment terms under
7 the terms of these -- let me back up.

8 First of all, Exhibit -- Movant's
9 Exhibit A1 is the original agreement, correct?

10 A. That's correct.

11 Q. And then Exhibits A2, Movant's
12 Exhibit A2 through A7 are subsequent amendments to
13 the original agreement?

14 A. Yes, sir, that's correct.

15 Q. And Exhibit A -- Movant's A7 is the
16 last signed agreement between HSG and WorldCom, is
17 that correct?

18 A. That is correct.

19 Q. What were the payment terms from
20 WorldCom to HSG pursuant to the terms of these
21 exhibits, A1 through 7?

22 A. Based upon the monthly billing of
23 all the customers who had been -- who were
24 contributing to the monthly revenue, the terms
25 were that our company would receive a commission

1 WORLDCOM, INC., ET AL

2 that was deemed earned and to be paid 45 days at
3 the end of the billing month.

4 Q. And how was that commission rate
5 determined according to the contract?

6 A. It was determined on a
7 product-by-product basis; so some products paid a
8 little bit higher commission, some products paid a
9 little lower commission.

10 Q. Well, in the course of fulfilling
11 the contracts, did HSG do anything besides market
12 for new customers?

13 A. Yes, we provided customer service
14 centers to be the front-end for customer service
15 for these customers.

16 Q. And what does customer service
17 consist of?

18 A. Well, customer service consists of
19 a lot of different things. Customers would call
20 us for a variety of reasons, including ads and
21 changes to their services, changing toll-free
22 numbers, changing the ring to numbers on a
23 toll-free call. They might call with complaints:
24 My long distance isn't working, my calling card
25 isn't working, or my toll-free number isn't

1 WORLDCOM, INC., ET AL
2 working.

3 Or it might be something as simple
4 as: What is my rate when I make calls within my
5 particular state or what is the rate when I call
6 from the US to Germany or what if I use my calling
7 card? I'm travelling in Switzerland and I want to
8 call back a relative in this country, what are my
9 rates?

10 So we provided that to the
11 customers, as well as taking simple things as
12 changes of addresses.

13 Q. How did customers know to call HSG
14 with these customer service issues?

15 A. Well, they knew for a lot of
16 reasons. It was our whole idea to have the
17 customer identify with us as their service
18 provider, so our marketing was all under our names
19 and trademarks and logos.

20 When the customer -- when we were
21 successful in enrolling a customer with WorldCom,
22 they received a welcome letter that had our name
23 and logo and it was signed by the then president
24 of the company, Jeffrey Bein. His signature was
25 the only signature on it.

1 WORLDCOM, INC., ET AL

2 The welcome letter also contained
3 our service mark names for our products like
4 UltraCall and UltraNet and UltraCard. Those were
5 our service mark names. So we wanted the customer
6 to identify with us.

7 In addition, for every customer
8 receiving a calling card, we designed the calling
9 card and on the front of the card was our customer
10 service center phone number with the instructions
11 to call us for additional cards or other services.

12 Q. At the time the bankruptcy case was
13 filed by WorldCom on July 21st, 2002, I gather
14 there were customers that WorldCom, for the
15 service, that were enrolled by HSG, is that
16 correct?

17 A. Oh, a lot of customers.

18 Q. Is it okay for us to understand
19 that when I use the term "customers," unless I
20 explain otherwise, I will be referring to those
21 customers that were enrolled by -- for the
22 WorldCom service prepetition by HSG, is that okay?

23 A. That's correct, because we were --
24 had an exclusive agreement with them.

25 Q. Well, what does that mean? You

1 WORLDCOM, INC., ET AL

2 have an exclusive agreement?

3 A. Well, let me -- probably for the
4 last four to six years, probably close to six
5 years of our association with them in our
6 exclusive exclusivity arrangement, we were not
7 permitted to offer the services of any other
8 vendor except for WorldCom.

9 Q. And if you -- if one were to look
10 at Exhibits A1 through 7, which is the -- which
11 are the executed agreements between HSG and
12 WorldCom, those are all related to this exclusive
13 arrangement?

14 A. Yes, sir.

15 Q. All right. Did that arrangement
16 eventually terminate?

17 A. Yes, it did.

18 Q. And the contract -- the last sixth
19 amendment was terminated, is that correct?

20 A. That's correct.

21 Q. Was that termination initiated by
22 HSG?

23 A. It was.

24 Q. And if I refer you to Exhibit,
25 Movant's Exhibit A9, is that a true and correct

1 WORLDCOM, INC., ET AL
2 copy of a letter from Jeffrey Bein to WorldCom?

3 A. Yes, it is.

4 Q. And that's initiating the
5 termination, is that correct?

6 A. Correct.

7 Q. And, to your knowledge, was that
8 termination letter sent pursuant to the contracts
9 with WorldCom?

10 A. Yes, it was. Yes, it was.

11 Q. Who is Jeffrey Bein?

12 A. Jeffrey Bein is my son who was then
13 president of the company.

14 Q. As of June 28th, 2002, what was
15 your title with the company?

16 A. I was vice-president.

17 Q. And as vice-president of the
18 company at that time, were you aware -- you were
19 aware that your son was sending this letter?

20 A. Absolutely.

21 Q. And it was sent with your
22 authorization?

23 A. Absolutely.

24 Q. Why were you -- why was HSG
25 terminating this contract with WorldCom?

1 WORLDCOM, INC., ET AL

2 A. There was only one purpose in mind
3 and that was to become a nonexclusive agent. We
4 wanted to be released from that and that's why we
5 sent it.

6 Q. You wanted to be released from the
7 exclusivity?

8 A. The exclusivity, not to -- we
9 wanted to continue to do business with WorldCom
10 but on a nonexclusive basis.

11 Q. And were you having any
12 conversations, you personally, with any
13 representative of WorldCom at or around June 28th,
14 '02 in this regard?

15 A. Absolutely. As a matter of fact,
16 there was another amendment that was offered to us
17 to make us nonexclusive even prior to sending this
18 letter out.

19 Q. And is that what's been termed the
20 seventh amendment which is Movant's Exhibit 8?

21 A. Yes. That was the seventh
22 amendment that basically kept all the terms and
23 conditions of the previous contracts and
24 amendments but made us a nonexclusive agent.

25 Q. And was that agreement prepared by

1 WORLDCOM, INC., ET AL

2 WorldCom, to your knowledge?

3 A. It was definitely prepared by
4 WorldCom.

5 Q. And was it signed by HSG?

6 A. Yes, sir.

7 Q. To your knowledge, has WorldCom
8 ever signed it?

9 A. No, we submitted it to them and
10 have not heard from them since.

11 Q. Approximately when did HSG submit
12 this seventh amendment to WorldCom?

13 A. Oh, the seventh amendment?

14 Q. Yes.

15 A. I am not sure if the exact date was
16 probably sometime mid-July.

17 Q. And after it was submitted, was
18 there any further conversations or communications
19 with representatives of WorldCom --

20 A. Yes, I was.

21 Q. Let me finish my question.

22 A. Sorry, sir.

23 Q. After this was submitted, the
24 seventh amendment was submitted to WorldCom for
25 its approval, were there any further

1 WORLDCOM, INC., ET AL
2 communications between you and representatives of
3 WorldCom regarding continuing your -- HSG's
4 relationship with WorldCom?

5 A. Yes, there were several
6 conversations, primarily with my direct WorldCom
7 representative by the name of Brent Lako
8 (phonetic.)

9 Q. The termination letter of
10 June 28th, 2002 was accepted by WorldCom, was it
11 not?

12 A. Yes, it was.

13 Q. And I would refer you to
14 Exhibit A10. Is that the letter from WorldCom
15 that acknowledges acceptance?

16 A. That's correct.

17 Q. And did you receive this letter?

18 A. I did receive this letter.

19 Q. And did you read this letter?

20 A. I sure did.

21 Q. And did you, at the time you
22 received this letter, intend to abide by the terms
23 and conditions that were contained in this letter?

24 A. We absolutely did, yes.

25 Q. So this agreement is terminated,

1 WORLDCOM, INC., ET AL

2 the termination of the agreement is accepted by
3 WorldCom. Was there ever any formal agreement
4 entered into thereafter by WorldCom and HSG?

5 A. No, there was not.

6 Q. Has HSG been paid any commissions
7 for customer usage after the bankruptcy case was
8 filed?

9 A. Yes, we did receive some
10 commissions after the filing date.

11 Q. For what periods and in how much --
12 how much, if you recall?

13 A. For the last week in July, say,
14 from the filing date through the end of July, it
15 was a very, very small amount, I think on the
16 order of 10, \$15,000. For the billing month of
17 August we received approximately \$200,000. And
18 for the billing month of September, our commission
19 check was \$225,000.

20 Q. Did HSG attempt to procure any new
21 customers for WorldCom after the bankruptcy case
22 was filed?

23 A. After the case was filed and after
24 I was told that we would not receive commissions
25 for new customers, we did not attempt to procure

1 WORLDCOM, INC., ET AL
2 new customers for WorldCom; however, we continued
3 to service, of course, the current ones.

4 Q. Were you ever told by a
5 representative of WorldCom after the bankruptcy
6 was filed that you would continue to receive your
7 residual commissions or the commissions for
8 services generated by the existing customers you
9 procured after the bankruptcy was filed?

10 A. Very definitely, several times in
11 several different formats.

12 Q. And -- anything orally? Did you
13 have any conversations with representatives of
14 WorldCom?

15 A. Yes, I did.

16 Q. Would you tell us with whom those
17 conversations, each conversation was and the
18 approximate date?

19 A. I spoke with Brent Lako several
20 times in the month of August and he assured me
21 that if we abided by the terms of our -- or the
22 surviving terms of our agreement, we would
23 continue to get paid our commissions. He very
24 definitely used the exact terms, "Your only hole
25 in this thing is going to be the prepetition two

1 WORLDCOM, INC., ET AL

2 months and three weeks."

3 Q. So in that conversation, were you
4 asked to not solicit the customers away from
5 WorldCom?

6 A. Oh, yes, that was part of the deal,
7 yes.

8 Q. And was that part of the
9 termination letter you received from Kirk Gibson
10 on behalf of WorldCom?

11 A. Kirk Reynolds, yes.

12 Q. Kirk Reynolds. Sorry, Kirk Gibson
13 I think is the baseball player. Sorry about that.

14 A. His message clearly was don't
15 solicit the customers and you'll get your ongoing
16 residual commissions.

17 Q. And did you adhere to that?

18 A. Absolutely.

19 Q. Did you ever deviate from that
20 request to not solicit?

21 A. We deviated, perhaps, two times;
22 one was an isolated incident and one was a formal
23 decision that we had to -- that our business
24 really needed to do something to survive.

25 Q. The isolated incident, let's talk

1 WORLDCOM, INC., ET AL
2 about that for a second.

3 Before I do that, though, let me
4 point out to you Exhibit No. A11, if I may.

5 A. Yes, sir.

6 Q. And can you describe -- that's a
7 memorandum from WorldCom, is that correct?

8 A. Yes, it is.

9 Q. And did HSG receive this
10 memorandum?

11 A. We did, yes.

12 Q. And Exhibit 12, do you see that,
13 A12?

14 A. Yes.

15 Q. And, to your knowledge, was that a
16 letter that was posted on the Internet by
17 WorldCom?

18 A. Yes.

19 Q. And did you view this by looking on
20 the Internet?

21 A. Well, I did, but in addition to
22 that, we received this letter, I believe, also in
23 the mail.

24 Q. So this letter --

25 A. Sorry, not the first page but the

1 WORLDCOM, INC., ET AL

2 actual letter itself we received in the mail.

3 Q. So let's be clear. We're looking
4 at Exhibit A12 which consists of three pages?

5 A. Correct. That is all definitely on
6 the Internet, but in addition to -- rather than
7 the first page, the letter that starts with "Dear
8 Agent Partner," is something we received also in
9 the mail.

10 Q. Understood.

11 So you received -- HSG receives
12 this August 5th letter and it also receives the
13 August 6th letter from Mr. Reynolds?

14 A. Correct.

15 Q. How did you, in your mind, construe
16 those two letters together?

17 A. To me, they were absolutely
18 perfectly clear. They're saying follow -- abide
19 by the terms of your contract or the surviving
20 terms -- which essentially means don't solicit the
21 customers -- and you will get your ongoing earned
22 commissions.

23 It's not even an interpretation.
24 It says that.

25 Q. All right. And then we talked

1 WORLDCOM, INC., ET AL

2 about that you abided by or HSG abided by that
3 request except for two situations?

4 A. Correct.

5 Q. And one of them you indicated.

6 Just so we're clear for the record,
7 when we talk about solicit, we're talking about
8 right now soliciting the Customers, using a
9 capitalized "C" for Customers, as those Customers
10 procured or enrolled by HSG for WorldCom
11 prepetition, is that correct?

12 A. That's correct, yes.

13 Q. So when we talk about solicitation
14 for these following questions, do you understand
15 the meaning, going out and trying to take away
16 those Customers with a capitalized "C" and
17 using -- from WorldCom's business?

18 A. That's exactly what I understand,
19 yes.

20 Q. And there are two instances, is
21 that correct?

22 A. Correct.

23 Q. And let me show to you Exhibit A15.
24 Take a look at that, please.

25 A. Yes.